IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24133 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? YES

2 To be referred to the Reporter or not ? YES

3 Whether their Lordships wish to see the fair copy of the judgment ? No

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? No

5 Whether it is to be circulated to the civil judge ? No

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CHANASMA-PATAN TALUKA GRAM VIKAS HIGHER EDUCATION TRUST - Petitioner(s)
Versus
HEMCHANDRACHARYA NORTH GUJARATUNIVERSITY - Respondent(s)

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Appearance :
MR HARNISH V DARJI for Petitioner(s) : 1.
MR MITUL K SHELAT for Respondent(s) : 1.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 30/10/2007

ORAL JUDGMENT

1 Rule. Learned Advocate for the respondent University is

directed to waive service. In light of the view that the Court is inclined to adopt the petition is taken up for final hearing and disposal today.

2 The petitioner is a trust running various Colleges and is engaged in various educational activities. On the basis of resolution dated 10.04.2005 the petitioner moved National Council for Teacher Education (NCTE) on 13.04.2005 for permission to start a new course. After verification of the application made by the petitioner trust as well as fulfillment of the requirements of NCTE a conditional recognition order came to be made by NCTE on 24/26.07.2007. The petitioner thereupon approached the respondent University seeking affiliation and the application was accompanied by the requisite affiliation fees. The respondent University constituted a Local Inspection Committee on 06.08.2007 and the inspection has been carried out on 11.08.2007. The report of the Local Inspection Committee has been tendered on 22.08.2007.

3 In the meantime, the final recognition order was issued by NCTE on 14.08.2007 granting recognition to the B.Ed. Course of one year duration with an annual intake of 100 students. By way of additional affidavit on record the

petitioner has also furnished details of the procedure of recruitment of staff in presence of the experts nominated by respondent University.

4 Upon issuance of notice respondent University has filed Affidavit-in-Reply dated 04.10.2007 annexing therewith a copy of resolution dated 28.09.2007 of the Academic Council. In so far as the petitioner is concerned the Academic Council, after considering the report of the Local Inspection Committee, has recorded that as it is not possible to ensure completion of imparting of education for a minimum period of 90 days in the first term the petitioner must not be allotted students for Academic Year 2007-2008. However, for Academic Year 2008-2009 necessary steps for affiliation and allotment shall be undertaken upon fulfillment of the requisite conditions as well as recruitment of the teaching staff.

5 Further, Affidavit-in-Reply has been filed by the respondent University whereunder the academic schedule for academic year 2007-2008 has been annexed and the relevant dates are as under :

i	First Academic Session.	15th June 3rd November
ii	Diwali Holidays.	5th November to 25th November
iii	Second Session.	26th November to 25th April
iv	Preliminary Examinations	7th February
v	Practical Examinations	25th February
vi	Theory Examinations	17th April

6 On behalf of the petitioner the learned Advocate has placed reliance on the Apex Court decision in case of *State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Ors, JT 2006(4) SC 201* as well as order made by Division Bench of this Court in Letters Patent Appeal No. 1077 of 2006 on 12.09.2006 in case of *Gujarat University Vs. Vadodara Jilla Sarvodaya Seva Mandal Sanchalit Late Monghiba & Ors*. Reliance has also been placed on order dated 21.09.2007 made by Division Bench in Letters Patent Appeal No. 1870 of 2007 in case of *Navjiban Educational Charitable Trust – Dhanera Vs. The State of Gujarat and Ors.* It was submitted that in light of the aforesaid decisions once recognition is granted by NCTE the respondent University has no role to play and is bound to grant affiliation and allot students. That the entire exercise of constituting Local Inspection Committee, undertaking inspection, tendering of report, consideration by different bodies of the respondent University is not warranted and the claim of the petitioner to

be affiliated and allotment of students is required to be accepted by respondent University without any demur. It was further submitted that the petitioner having already appointed necessary staff, as can be seen from the staff profile placed on record, the apprehension expressed by respondent University that there would be inadequacy of teaching staff is unfounded. Hence, it was submitted that on no count can the University refuse to grant affiliation and allot students. That the petitioner college shall conduct the classes even on holidays to complete the total number of working days.

7 In the first instance it is required to be noted that the respondent University has not rejected the application for affiliation and grant of students. Respondent-University has merely stated that considering the academic calendar it would not be possible and practicable for the petitioner institution to complete the educational course in the first term including the required minimum attendance of the students and hence, instead of Academic Year 2007-2008 the affiliation is required to be granted from Academic Year 2008-2009.

8 The question that then arises is whether it is open to respondent University to take such a stand once recognition

has been granted by NCTE as contended by the petitioner. In this context it is necessary to take note of the relevant terms stipulated by NCTE while granting recognition in its order dated 14/21.08.2007. In condition No.3 it is stated thus :

> *"NOW, THEREFORE, in exercise of the powers vested under Section 14(3) (a) of the NCTE Act, 1993, the Western Regional Committee hereby grants recognition to SMT. K.B.PATEL VIDYA SANKUL PALASAR SHELAVI STATION, TA- CHANASMA, DIST. PATAN, GUJARAT for conducting BED course of One year duration with an annual intake of 100(SEC) students under clause 7(10) of Regulation dated 13/1/2006 (if applicable) subject to fulfillment of the following.*
>
> *xxx xxx xxx*
>
> *ii. The institution shall comply with the various other norms and standards prescribed in the NCTE regulations, as amended from time to time".*

Again in condition No. 4 the order stipulates :

> *"4. Further, the recognition is subject to fulfillment of all such other requirements as may be prescribed by other regulatory bodies like UGC and the State Government etc. wherever applicable".*

9. The Norms and Standards for Secondary Teacher Education Programme leading to Bachelor of Education (B.Ed.) Degree as prescribed by NCTE stipulate the following requirements in relation to duration and working days of the programme :

"2.0 Duration and working days

2.1 Duration

B.Ed. Programme shall be of a duration of at least one academic year.

2.2 Working Days.

There shall be at least 200 working days exclusive of period of examination and admission etc., out of which at least 40 days shall be for practice-teaching in about ten schools at upper primary/secondary/senior secondary level. A working day shall be of a minimum of 6 hours in a <u>six-day</u> week, during which physical presence in the institution of teachers and student-teachers is necessary to ensure their availability for individual advice, guidance, dialogues and consultation as and when needed."

10. The Norms prescribed for academic staff read as under :

"4.0 Staff

4.1 Academic

4.1.a(i) Number (for unit of 100 students)

Principal/Head - 1

Lecturers - 7 “

Therefore, on a conjoint reading of the conditions laid down in the recognition order and the relevant Norms prescribed by NCTE it becomes apparent that the institution is bound to comply with various Norms and Standards prescribed in NCTE regulations. As noted hereinbefore, the Norms prescribe that the duration of B.Ed. programe shall be of at least one academic year. Similarly there shall be at least 200 working days excluding the period of examination and admission etc., out of which at least 40 days shall be for practice-teaching in about 10 schools at different prescribed levels, like upper primary, secondary, senior secondary etc. The Norms further require each working day to be of minimum six hours in a six day week during which physical presence of the teacher and the students is must in the institution.

11 Condition No.4 of the recognition order further requires that the recognition is subject to fulfillment of all such other requirements as may be prescribed by other regulatory bodies like UGC and State Government etc. wherever applicable to all faculties and institutions which are affiliated with the University who is to hold examinations for all graduate and other courses.

12 There is one more aspect of the matter. The Court cannot overlook the basic fact that the students who are to be allotted are teachers of tomorrow and such future teachers are going to impart education to other students who themselves are future professionals of the nation. Therefore, any shortcoming in the education programme of the student-teachers today would have multiple ripple effect and have far reaching consequence which cannot be lost sight of. One may usefully recapitulate what the Apex Court has stated in the case of *Andhra Kesari Education Society Vs. Director of School Education and others, AIR 1989 SC 183 :*

> *"20. Before parting with the case, we should like to add a word more. Though teaching is the last choice in the job market, the role of teachers is central to all processes of formal education. The teacher alone could bring out the skills and intellectual capabilities of students. He is the engine of the educational system. He is a principal instrument in awakening the child to cultural values. He needs to be endowed and energised with needed potential to deliver enlightened service expected of him. His quality should be such as would inspire and motivate into action the benefiter. He must keep himself abreast of ever changing conditions. He is not to perform in a wooden and unimaginative way. He must eliminate fissiparous tendencies and attitudes and infuse nobler*

and national ideas in younger minds. His involvement in national integration is more important, indeed indispensable. It is, therefore, needless to state that teachers should be subjected to rigorous training with rigid scrutiny of efficiency. It has greater relevance to the needs of the day. The ill trained or sub-standard teachers would be detrimental to our educational system : if not a punishment on our children. The Government and the University must, therefore, take care to see that inadequacy in the training of teachers is not compounded by any extraneous consideration. Order accordingly."

13 It is also necessary to take note of the fact that the recognition order made by NCTE merely grants recognition to the petitioner for conducting B.Ed. Course of one year duration with annual intake of 100 students in exercise of powers under Section 14(3)(a) of the NCTE Act,1993 read with clause 7(10) of the regulation dated 13.01.2006. The order itself indicates that the said order is not for a particular academic year and hence, the petitioner cannot insist as a matter of right that the petitioner must be granted affiliation and allotted students for Academic Year 2007-2008 only. The order itself stipulates compliance with the Norms prescribed by NCTE itself and in the eventuality, when in a particular academic year considering the prescribed Norms read with academic

schedule of the examining body, it is not possible to comply with the Norms no relief can be granted only for the academic year as prayed for. If the petitioner fulfills all other requirements on the basis of the same recognition order the petitioner becomes entitled to the relief for succeeding academic year.

14 In the aforesaid circumstances, the decision taken by respondent University to grant affiliation and allot students to the petitioner institution from Academic Year 2008-2009 cannot be faulted and is not required to be interfered with.

15 As regards the contention of running the college during vacation and on holidays, it is necessary to take note of the fact that vide order dated 14.11.2006, in the case of a similar petitioner intending to run B.Ed. Course, in Special Civil Application No. 22256 of 2006 in the case of *Shri Anjuman Education Trust Vs. State of Gujarat*, the following order came to be made :

> *"3 It is also necessary to record that in a second set of proceedings being Letters Patent Appeal No. 1279 of 2006 in the case of Shivshakti Education Charitable Trust Vs. State of Gujarat the same*

Division Bench vide order dated 10.10.2006 came to the conclusion, after considering its previous order dated 9.10.2006 in Shri Anjuman Education Trust Vs. State of Gujarat, the case of Vrundavan Kelavani Mandal Supasi Sanchalit (supra), that as time is of essence and no reasonable time is available hereafter to Shri Anjuman Education Trust Vs. State of Gujarat, complete the process of admission and for completion of course in the rest of the days available in the academic session it is not possible to permit any institution to grant admission for this academic session. Accordingly the Appeal was dismissed.

4 Against the subsequent order dated 10.10.2006 the petitioner therein carried the matter in Appeal and sought Leave to Appeal being SLP (Civil) No.17380 of 2006 and cognate matters. All the petitions came up for hearing before the Apex Court on 6.11.2006 and the Apex Court has recorded that the Court was not inclined to interfere with the impugned order. The Special Leave Petitions were dismissed without prejudice to the rights of the petitioners to move a fresh application seeking permission to admit students from the next academic year.

5 In the aforesaid set of facts and circumstances of the case it is abundantly clear that if on 6.11.2006 the Apex Court found that the order made by the Division Bench of the High Court on 10.10.2006 holding that sufficient time was not available for Shri Anjuman Education Trust Vs. State of Gujarat, completing process of admission and the academic course, nea Shri Anjuman Education Trust Vs. State of Gujarat, nearly a month thereafter it cannot be gainsaid that the said order would operate with greater rigour.

6 Therefore, without entering into any discussion on merits of the issue involved between the parties suffice it to state that considering the remainder period of academic year that is available no relief can be granted to the petitioner as it would not be possible to complete the process of admission and the academic course during the balance period of academic year."

16 In the case of *State of U.P. And others Vs. D.K. Singh and others, AIR 1987 SC 190* the Supreme Court was called upon to decide whether a course of study should commence in January or July of a year. The Supreme Court stated thus :

"3. Having considered the matter we think that the High Court was not justified in interfering in a matter of such an academic nature as this. The question whether a course of study should commence in January or July of a year in a post graduate medical institution is dependent on number of factors like the availability of seats, the availability of beds in the Hospital, the availability of teachers, laboratories and equipment and perhaps a host of other factors with which we are not familiar. Ordinarily, it should, therefore, be a matter best left to the University. In the case of medical studies the Medical Council of India must also have a say in the matter. We find that the Medical Council of India has prescribed a teacher-student ratio of 1:1 for post graduate medical courses. To have two parallel post graduate medical courses running simultaneously will certainly disturb the teacher-student ratio. This is certainly a serious matter concerning the standard of medical education and cannot be lightly brushed aside. We also notice that admissions to post graduate courses in all medical colleges in Uttar Pradesh are made once a year only and never twice a year. We do not think that the authorities can be said to have acted arbitrarily and unreasonably in not departing from the practice which they had invariably been following. When an academic year should commence and when it should end is eminently a matter for the education authorities and not for the court. We cannot dislocate the time schedule of the university merely for the convenience of a few students. The appeal is, therefore, allowed. The judgment of the High Court is set aside and the writ petition is dismissed.

Appeal allowed".

17 In the case of *Sagar Education & Charitable Trust Vs. State of Gujarat & Ors in Special Civil Application No. 19132 of 2006* and cognate petitions on 27.09.2006 this Court while rejecting similar contentions in case of petitioners seeking allotment of students to P.T.C. Colleges observed :

> *"13. In the conclusion, I find that it is not possible to accept the petitions. Granting any order in favour of the petitioner would only amount to unduly hurrying the process of granting of admissions eventually resulting into a curtailed educational activities for the first year of otherwise two year course. I fail to understand how the petitioners contend that even if the admissions are granted at this stage, it would be possible for them to impart education for actual 180 days as required under the rules. Calculations placed on record by the petitioner do not inspire confidence. As noted earlier, it is impermissible to start these colleges before Diwali Vacation. Effectively, therefore, students would attend classes only from 1st November or thereabouts. Examinations are to be conducted in April or May 2007. Less than six months time will be left. Their stand however, appears to be*

that they would curtail vacations, they would work on Sundays and public holidays and would add one hour in the morning and evening session of the college to ensure fulfillment of 180 days of actual educational activities. Only to permit the petitioners to start colleges for this academic year to stretch the requirements to such unreasonable limits cannot be countenanced. Educational institutions set up their calendars as per long standing practise and norms. Students who have to undergo rigorous training, require periodical breaks. Holidays, Sundays and vacations are meant for recreation and recouping. Certain number of hours are fixed for active classes so that for the remaining period, students either may prepare themselves for studies or divert time for recreational activities. By mindlessly adding additional coaching time and by providing for working of college round the clock through out the year would completely destroy this purpose and would leave the foundation of the students weak. Human mind cannot work as Robot and cannot be expected to absorb training without enough gaps to strengthen the foundation. It is unfortunate that the petitioners who seek to espouse the interest of the students also; come up with suggestions of running their course virtually without

breaks only to suit their purpose. Both ideas run counter to each other."

18 In the aforesaid case of *Shri Anjuman Education Trust Vs. State of Gujarat (supra)* the petition was rejected reserving liberty to the petitioner to apply afresh for the next Academic Year. However, in the present case respondent-University has already taken a decision to grant affiliation and allot students for Academic Year 2008-2009 and therefore it is not necessary to direct the petitioner to make a fresh application. The learned Advocate for respondent University has also accepted this position. In the circumstances, respondent University shall abide by its resolution dated 28.09.2007 of the Academic Council and ensure that the petitioner institution is granted affiliation and allot students for Academic Year 2008-2009 without the petitioner being required to make a fresh application in this regard.

19 In light of what is stated hereinbefore, the relief as prayed for cannot be granted. However, the petition is allowed to the aforesaid extent viz. respondent University shall grant affiliation and allot students for Academic Year 2008-2009 considering the fact that the petitioner has complied with all

other requirements and fulfilled the requisite conditions stipulated in NCTE order of recognition. The petition is allowed accordingly in the aforesaid terms. Rule made absolute. There shall be no order as to costs.

Sd/-
(D.A. Mehta, J)

m.m.bhatt